



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1997

OR97-0226

Mr. Patrick Russell, P.C.  
Attorney at Law  
700 Building  
700 Paredes Avenue, Suite 107  
Brownsville, Texas 78521

Dear Mr. Russell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35027.

The Texas County of Hidalgo Office of Employment and Training ("OET") received an open records request from a current OET employee for certain records regarding the administration of grant funds. You have informed us that the OET is concerned with two of the five enumerated items of the request, and you have highlighted or marked with an "X" those portions of the documents which you assert may be withheld pursuant to section 552.107(1) of the Government Code.<sup>1</sup>

Specifically, you contend that a memorandum which was prepared by an OET employee for the Division Support Manager is privileged attorney-client communication because it was also routed to the agency attorney, among others. You also seek, pursuant to the attorney-client privilege, to withhold a responsive memorandum prepared by the Executive Director for the Internal Monitoring Unit Manager because the response "recites the issues raised in the [employee's] memo."

Section 552.107(1) of the Government Code excepts information from required public disclosure if

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<sup>1</sup>As you have not asserted any exception to the remaining three items, we assume that you have provided those records as requested.

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14. "Privileged information" is information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Rule 503(a)(5) of the Texas Rules of Civil Evidence defines a "confidential communication" as a communication

not intended to be disclosed to third persons other than those to whom disclosure is made *in furtherance of the rendition of professional legal services* to the client or those reasonably necessary for the transmission of the communication.  
[Emphasis added.]

We have reviewed the documents that you wish to withhold. It is not apparent to this office that the information at issue constitutes a confidential communication. Although the agency attorney was sent a copy of the employee memorandum, it does not appear to be a privileged confidential communication made in furtherance of the rendition of professional legal services. Thus, we conclude that the information at issue is not the type of information that is excepted from disclosure under section 552.107(1) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/rho

Ref.: ID# 35027

Enclosures: Submitted documents